

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NATHANIEL MARCUS GANN, et al.,

1:19-cv-01797-GSA-PC

Plaintiffs,

VS.

VALLEY STATE PRISON, et al.,

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL
(ECF No. 3.)**

Defendants

**ORDER GRANTING MOTION FOR
EXCEPTION TO THE 25-PAGE LIMIT
FOR THE COMPLAINT FILED ON
DECEMBER 26, 2019
(ECF No. 4.)**

**ORDER DENYING MOTION FOR
CLASS CERTIFICATION
(ECF No. 5.)**

I. BACKGROUND

Plaintiff Nathaniel Marcus Gann (“Gann”) and fourteen co-plaintiffs¹ are all prisoners proceeding *pro se* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff Gann is proceeding *in forma pauperis*. The Complaint commencing this action was filed on December 26, 2019. (ECF No. 1.)

¹ The fifteen named plaintiffs are (1) Nathaniel Marcus Gann, (2) Melvin Hiram Thomas, (3) David E. Phillips, (4) Jose Reyes, (5) Alton King, (6) John F. Weston, (7) Larry Eugene Boyce, (8) Michael Warsek, (9) Manfred Schockner, (10) Matthew Wilke Morgan, (11) Thomas Michael Joseph Fox, (12) Jeramie Prier, (13) Carlos Rodolfo Marroquin, (14) Oscar Zalaya, and (15) Vladimir R. Ebel. All of the plaintiffs are presently incarcerated at Valley State Prison in Chowchilla, California, and all of the plaintiffs signed the Complaint. (ECF No. 1 at 4, 28-29.)

1 On December 26, 2019, Plaintiff Gann filed a motion for appointment of counsel, motion
2 for exception to the 25-page limit for the Complaint, and motion for class certification.² (ECF
3 Nos. 3, 4, 5.)

4 **II. MOTION FOR APPOINTMENT OF COUNSEL**

5 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.
6 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require an attorney to
7 represent Plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court
8 for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional
9 circumstances the Court may request the voluntary assistance of counsel pursuant to section
10 1915(e)(1). Rand, 113 F.3d at 1525.

11 Without a reasonable method of securing and compensating counsel, the Court will seek
12 volunteer counsel only in the most serious and exceptional cases. In determining whether
13 “exceptional circumstances exist, the district court must evaluate both the likelihood of success
14 of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the
15 complexity of the legal issues involved.” Id. (internal quotation marks and citations omitted).

16 In the present case, the court does not find the required exceptional circumstances.
17 Plaintiff Gann argues that this case is meritorious, the plaintiffs’ incarceration limits their ability
18 to litigate, the facts of the case will be disputed, and the case is complex. At this early stage in
19 the proceedings, the court cannot make a determination that the plaintiffs are likely to succeed
20 on the merits. Plaintiffs filed the Complaint on December 26, 2019, less than two weeks ago,
21 and the Complaint awaits the Court’s screening required by 28 U.S.C. § 1915. Thus, to date the
22 Court has not found any cognizable claims in the Complaint for which to initiate service of

24 ² Plaintiff Gann indicates that he represents all of the plaintiffs and has signed and filed each
25 motion on behalf of all of the plaintiffs. (ECF No. 3 at 4:7-10; ECF No. 4 at 1:21-23; ECF No. 5 at 3:9-12.) Plaintiff
26 Gann does not have the authority to file documents on behalf of his co-plaintiffs. *Pro se* litigants have no authority
27 to represent anyone other than themselves. See Simon v. Hartford Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008) (non-
28 attorney plaintiff may not attempt to pursue claim on behalf of others in a representative capacity); Johns v. Cnty. of San Diego, 114 F.3d 874, 877 (9th Cir. 1997) (parent or guardian cannot bring suit on behalf of minor child);
Cato v. United States, 70 F.3d 1103, 1105 n.1 (9th Cir. 1995) (non-attorney party may not represent other plaintiffs);
C.E. Pope Equity Trust v. United States, 818 F.2d 696, 697-98 (9th Cir. 1987) (trustee cannot represent trust);
McShane v. United States, 366 F.2d 286, 288 (9th Cir. 1966) (non-attorney party may not represent other plaintiffs).

1 process, and no other parties have yet appeared. Moreover, based on a review of the record in
2 this case, the Court finds that plaintiffs can adequately articulate their claims. Accordingly, for
3 the foregoing reasons, the motion for the appointment of counsel shall be denied, without
4 prejudice to renewal of the motion at a later stage of the proceedings.

5 **III. MOTION FOR EXCEPTION TO THE 25-PAGE LIMITATION**

6 Plaintiff Gann requests that the court make an exception in this case to the twenty-five-
7 page limit for the Complaint pursuant to the e-filing order. In support of his request, Plaintiff
8 Gann asserts that this case has more than ten plaintiffs, spans three years of incidents and contains
9 five causes of action. Plaintiff Gann states that despite the preparer's best efforts, the Complaint
10 is twenty-nine pages long, which is four pages over the limit. Plaintiff requests that an exception
11 be made to allow the extra four pages of the Complaint.

12 Good cause appearing, Plaintiff's request shall be granted for the Complaint filed on
13 December 26, 2019.

14 **IV. MOTION FOR CLASS CERTIFICATION**

15 Plaintiff Gann requests that this case be certified as a class action because all of the
16 plaintiffs are in the custody of the California Department of Corrections and Rehabilitation
17 (CDCR) and participate in the Kosher Diet Program as a means to follow sincerely held religious
18 beliefs. Plaintiff Gann estimates that there are 1,800 class members housed at various CDCR
19 correctional institutions across California who are not free to communicate, and there are
20 common questions of law at all of the CDCR institutions.

21 The plaintiffs in this action are all non-lawyers proceeding without counsel. It is well
22 established that a layperson cannot ordinarily represent the interests of a class. See McShane v.
23 United States, 366 F.2d 286 (9th Cir. 1966). This rule becomes almost absolute when, as here,
24 the putative class representative is incarcerated and proceeding *pro se*. Oxendine v. Williams,
25 509 F.2d 1405, 1407 (4th Cir. 1975). In direct terms, none of the plaintiffs can "fairly and
26 adequately protect the interests of the class" as required by Fed. R. Civ. P. 23(a)(4). See Martin
27 v. Middendorf, 420 F. Supp. 779 (D.D.C. 1976). A plaintiff's privilege to appear *in propria*
28 *persona* is a "privilege ... personal to him. He has no authority to appear as an attorney for others

1 than himself.” McShane, 366 F.2d at 288 (citing Russell v. United States, 308 F.2d 78, 79 (9th
2 Cir. 1962)); Collins v. O'Brien, 93 U.S.App.D.C. 152, 208 F.2d 44, 45 (1953), cert. denied, 347
3 U.S. 944, 74 S.Ct. 640, 98 L.Ed. 1092 (1954). This action, therefore, will not be construed as a
4 class action and instead will be construed as an individual civil suit brought by multiple plaintiffs.
5 Therefore, the request to proceed with a class action shall be denied.

6 **V. CONCLUSION**

7 In accordance with the above, IT IS HEREBY ORDERED that:

8 1. Plaintiff Gann’s motion for appointment of counsel, filed on December 26,
9 2019, is DENIED without prejudice;
10 2. Plaintiff Gann’s request for an exception to the 25-page limit for the Complaint,
11 2019, is GRANTED as to the Complaint filed on December 26, 2019; and
12 3. Plaintiff Gann’s motion for class certification, filed on December 26, 2019, is
13 DENIED.

14 IT IS SO ORDERED.
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16 Dated: January 6, 2020

17 /s/ Gary S. Austin
18 UNITED STATES MAGISTRATE JUDGE
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